THE HONOURABLE SMT JUSTICE T. MEENA KUMARI
AND
THE HONOURABLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 9575 of 2005

ORAL JUDGMENT:
(Per T. Meena Kumari, J)

The writ petition is filed seeking to set aside the judgment of the A.P. Administrative Tribunal in O.A.No. 8539 of 2001 dated 8.11.2004.

The facts in brief are that:

Petitioner filed O.A.No.8539 of 2001 before the A.P. Administrative Tribunal seeking to declare the action of the 1st respondent in not promoting the applicant while promoting juniors to the applicant as per proceedings NO.6807/B2/RDH/98 dated 5.11.2001 as arbitrary, illegal and to issue consequential direction directing the respondents forthwith to consider and promote the applicant as Superintendent with effect from 13.11.2001 i.e. the date of promotion of V. Rajaiah, who is the applicant's immediate junior.

One Venkatesham also filed O.A.NO.8184 OF 2001 under Section 19 of Administrative Tribunal Act, 1985 praying the tribunal to call for the records relating to and connected with order Rc.No.6807/B2/RDH/98 dated 5.11.2001 of the 2nd respondent and to quash or set aside the same to the extent of inclusion of respondent Nos. 3 to 5 for consideration for promotion and consequently direct the respondents to consider the claim of applicants for promotion as office Superintendents in preference to respondents No.3 to 5 with all consequential benefits.

The learned A.P. Administrative Tribunal after hearing both the parties and considering the material has disposed of the both the O.As. with the following observations and directions:

“As we see the respective facts in both the matters, undoubtedly the applicants are recruited through DSC 1969.Undoubtedly, as per their selections in DSC 1969, the seniority has to be fixed in the cadre of Junior Assistants. Equally, significant is the fact that once a request transfer is made from one district to another district, since the post of junior assistant is a district cadre post, the reckoning of seniority has to be made as the last candidate of the approved probationers in the category to which they belong to. Obviously, Sri K. Venkateshwaru, who was initially allotted to Medak district and the applicant in O.A.No.8539 of 2001 have sought for mutual transfer. In the case of the applicant, a specific mention is made that he has to take last rank. But, in case of Sri K. Venkateswarlu, such a mention was not made. But, one has to take it that even he has to take last rank even though there is no mention about it. So both the applicant and Sri K. Venkateswarlu have to take last rank among the approved probations in the units to which they sought for mutual transfer. When juniors to the applicant in O.A.NO.8539 of 2001 were sought to be promoted, the applicant raised objection for promoting such persons and also for including the name of Sri K. Venkateshwarlu whose seniority was preserved. This preserving of senior in respect of Sri K. Venkateshwarlu is bad in law. Since Sri K. Venkateshwarlu is not a party in this matter, a notice may be given to him and he should be heard before refixing his seniority. Accordingly, when once the seniority of the applicant is considered as junior-most among the approved probationers in Hyderabad district, the seniority of Sri K. Venkateshwarlu has to be reckoned basing on the refixed seniority in the cadre of Senior Assistant. Based upon that seniority list, the case of Sri K. Venkateshwarlu has also to be considered. Then applicant should be considered for promotion if he comes within the zone of consideration and not on the basis of the interim order of the Tribunal which was acted upon by the authorities. Obviously, the action taken based upon the interim order has to yield to the final order now passed. Accordingly, a direction is given in this case, before further considering his promotion, necessary examination has to be made as per the above directions and with regard to his continuing as Office Superintendent, he may be continued temporarily till further promotion from the post of Office Superintendent to higher post is made. Till such review is made, he may be continued as Office Superintendent. With these directions, O.A.No. 8539 of 2001 is

disposed of"

Heard both sides.

The learned counsel for the petitioner contended that one Venkateshwarlu was transferred on mutual transfer with a condition that the petitioner shall take last rank among the approved probationers in the units to which they sought for mutual transfer. Taking into consideration the submission, the tribunal has preserved the seniority of Venkateshwarlu. It is further contended by the learned counsel for the petitioner that preserving the seniority in respect of Venkateshwarlu is bad in law. It is the further contention of the learned counsel for the petitioner that the said Venkateshwarlu should be heard for fixing the seniority. Even though he was not a party to the proceedings before the tribunal for fixing the seniority, the seniority of Venkateshwarlu was fixed. It is also further ordered that the seniority of the petitioner is considered as junior-most among the approved probationers in Hyderabad District, the seniority of K. Venkateshwarlu has to be reckoned basing on the refixed seniority in the cadre of Senior Assistant. The learned counsel for the petitioner contends that the said Venkateshwarlu was not made as a party to the O.A. or to this petition and the Order was passed behind and back of Venkateshwarlu effecting the seniority.

Under the above circumstances, the Order of the tribunal which is voilative of principles of natural justice is liable to be set aside and the matter is required to be remitted back to the tribunal for the purpose of fresh disposal.

Accordingly, the order of the learned tribunal in O.A.No.8539 of 2001 dated 8.11.2004 is set aside and the Writ Petition is allowed. However the matter is remitted back to the tribunal for fresh disposal within a period of three months from the date of receipt of a copy of this order.

With the above observations, the Writ Petition is allowed and matter

is remitted back to the tribunal.

T. MEENA KUMARI, J

G. CHANDRAIAH, J

5.6.2007

CHV